

REMARKS

Claims 1, 4-31, and 43-46 are currently pending in the present application, and are subject to a restriction. In the Office Action, the Examiner restricted the claims into two Groups: Group I – Claims 1 and 4-14, drawn to a combination of two stacked containers; and Group II – Claims 15-31 and 43-46, drawn to the subcombination of one container. As required, Applicants elect Group I – Claims 1 and 4-14 to be examined, and respectfully traverse the Examiner's restriction requirement.

Applicants submit that the Examiner has not shown the inventions of Groups I and II are distinct. As stated in the Office Action, inventions related as a combination and subcombination are distinct if it can be shown that “(1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations.” The Examiner's showing in the Office action does not meet either of these required elements, and restriction is not proper.

Regarding element (2), the Examiner has not shown that the subcombination of Group II has utility by itself or in other combinations. The Examiner asserts that a single beverage cup that is never stacked or nested with another cup has utility over a single cup. Applicant respectfully disagrees with this assertion by the Examiner. The fact that a cup is never stacked or nested with another cup does not, in and of itself, establish any utility over a stackable cup. Applicant has not articulated any separate utility in the record and the Examiner has not explained why a single cup that is not, or cannot be, stacked or nested would have utility that is separate from a stackable or stacked cup. The claims of Group II may contain elements that confer separate utility from the claims of Group I, but the Examiner has not sufficiently articulated any such separate utility. Thus, the Examiner has not made the showing required by element (2) above, and the restriction is not proper.

Additionally, regarding element (1), the reasoning cited by the Examiner is completely unrelated to the Examiner's basis for restriction. The Examiner restricts the claims based on the fact that Group I is directed to a combination of two containers, while Group II is directed to the subcombination of a single container. However, the Examiner's cited reason is that “the combination doesn't require an arcuately formed longitudinal recess.” First, the “recess”

element is only one element of the claims, and does not serve as the basis for distinction between classes for searching. Rather, the Examiner divides the claims into groups based on the fact that Group I recites two containers and Group II recites only a single container. And second, many of the claims of Group II also do not require an arcuately formed longitudinal recess. Thus, while the inventions of Groups I and II may be patentably distinct from one another, the Examiner has not made a sufficient showing of element (1) required for restriction.

Further, Applicants submit that it would not present an undue burden for the Examiner to search the claims of both Group I and Group II together. Primarily, Applicants note that the Application has contained claims directed to a combination of two containers since filing, and the Examiner has not identified any problem or burden in searching for both a single container and a combination of two containers until the present Office Action. Original claim 2 recited, in part, "the arched portion and the raised ledge are cooperatively dimensioned such that the raised ledge sits within the arched portion of a second identical container when the second identical container is nested upon the container." Original claim 35 contained a similar element. Original claim 25 recites, in part, "means for ensuring proper nesting of the container with a second identical container." Original claims 3 and 36 also included a similar element. Applicants note that claim 25 is one of the claims the Examiner has placed into Group II, rather than Group I, further bolstering Applicants' position that Group I and Group II can be easily searched together.

Thus, Applicants submit that the Examiner has not met the required showing for restriction between the claims of Groups I and II, and respectfully request the Examiner to reconsider and withdraw the restriction requirement.

CONCLUSION

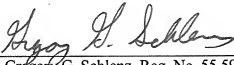
In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the Examiner's restriction requirement and examination of claims 1, 4-31, and 43-46 in the present Application. Applicants submit that the Application is in condition for allowance and respectfully request an early notice of the same. The Examiner is requested to contact the undersigned attorney if anything is necessary to further the progress of the present Application.

Please charge any fees to Deposit Account No. 19-0733.

Respectfully submitted,

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By: _____



Gregory G. Schlenz, Reg. No. 55,597
BANNER & WITCOFF, LTD.
10 South Wacker Drive - 3000
Chicago, Illinois 60606
312-463-5000